

SENATE TAXATION

EXHIBIT NO. 1

DATE 2.18.11

BILL NO. SB383

BOARD OF COMMISSIONERS

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CASCADE COUNTY

Senate Bill – 383

“Define Spot Zoning”

February 18, 2011

Chairman Tutvedt and members of the Senate Taxation committee thank you for this opportunity to appear before you in support of Senate Bill 383. For the record my name is Joe Briggs and I am a Cascade County Commissioner. I appear before you today representing both the Cascade County Commission and the Montana Association of County Officials Community, Economic Development and Labor committee which I chair.

This bill has been brought forward by MACO in an effort to address the uncertainties injected into the process of zoning regulation by a recent 4 to 3 ruling of the Montana Supreme Court. This ruling runs counter to the idea of locally controlled zoning and drastically increased the size of a parcel that could be considered “Spot Zoning”. This ruling has created an environment in which zoning actions greater than a full section of land (680 acres in our case) are now construed as “small” in the determination of “Spot Zoning”. As a result, the ability of local government to take any zoning action has been called into question.

The concept of “Spot Zoning” has been used widely by the courts but the legislature has never defined the term nor provided any guidance to the courts as to when and how the term should be applied. As a result, the definition has altered over the years as various judges have applied their own interpretation. We believe that this definition will continue to be modified on a case by case basis until the legislature asserts its authority to define both the term and how it is to be applied within the context on Montana land use and zoning laws.

Senate Bill 383 does precisely that, it codifies the meaning of the term “Spot Zoning” and provides guidance on when it applies. The definition utilized in the bill comes from the “Little” case which has generally been the case cited as the definition of “Spot Zoning” here in Montana. This case and definition was also the one cited by the Montana Supreme Court in overturning the recent zoning action in Cascade County.

The second element of the bill is that the resulting law provides discretion to County Commissioners to make the determination of whether or not a proposed zoning action is substantially in compliance with the locally generated growth policy. If it is found to be in compliance, the bill specifies that the zoning action cannot be deemed “Spot Zoning”.

The growth policy is utilized as the standard against which the zoning action is measured because State law already utilizes it as the compliance standard for most land use regulatory documents.

The growth policy is a locally determined document created through a specifically defined process specified in 76-1-601. As stated in 76-1-601 (2) "the extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body."

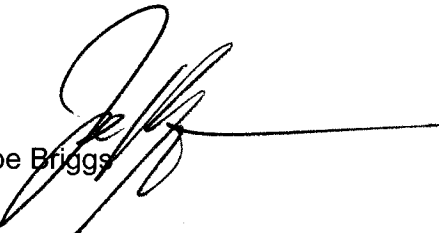
It is our belief that a locally elected Board of Commissioners assisted by a locally appointed Planning Board and a local staff is in a better position to determine the appropriateness of a zoning action and its compliance with the local growth policy than the courts.

I would also note that 76-2-203 was amended in 2009 to grant local governing board's greater discretion in adopting regulations for their local community. Cascade County adopted those statutory changes along with regulations implementing those changes yet the Supreme Court ignored both the statute and these implementing regulations in their July 2010 decision overturning the actions of the Cascade County Commission.

In summary, the overall goal of the Senate Bill 383 is to provide clarity for future zoning actions as to what "Spot Zoning" is and when the term applies. It is MACO's position that this type of decision belongs within the legislative body of a local jurisdiction and not in the hands of the courts.

I am joined today by two members of the Cascade County staff who were extensively involved in both the writing of Cascade County's growth policy, zoning regulations and the litigation that has prompted this bill; they are Brian Clifton, the Cascade County Public Works director and our Chief Civil Attorney, Deputy County Attorney Brian Hopkins.

Thank you for your attention, I and my associates will remain for any questions the committee may have.


Joe Briggs